

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 06-20003
)	
CLYDE SANDER COOK,)	
)	
Defendant.)	
)	

ORDER ON MOTION TO ORDER THE
UNITED STATES MARSHAL TO BRING DEFENDANT
TO COURT FOR REPORT DATE

The Court's regular report date for criminal cases is scheduled for Friday, March 24, 2006 at 9:00 a.m. For every defendant represented by the Federal Public Defenders Office, an identical motion has been filed which reads as follows:

Counsel herein moves the Court for an Order directing the United States Marshal to bring the defendant to Court as scheduled on Friday, March 24, 2006 at 9:00 a.m. The presence of the defendant is necessary for counsel to provide effective assistance during this critical stage of the proceedings, that being the report on the current status of this case.

On August 23, 2005, the Judges of the United States District Court for the Western District of Tennessee adopted

Administrative Order No. 2005-19. That order specifically provides as follows:

By unanimous vote of the judges of this district on August 21, 2005, the following procedures will become effective immediately:

- 1) Report dates for defendants incarcerated in the Mason,¹ Tennessee, facility or any other facility where there is video teleconferencing capability in the Western Division will be conducted by video teleconferencing unless the presiding judge orders otherwise. If an incarcerated defendant plans to enter a guilty plea at the report date, defense counsel should notify the U.S. Attorney and Marshal at least 24 hours before the report date so that defendant may be brought to the report date for a personal appearance.

¹The Mason, Tennessee detention facility is located in Tipton County, Tennessee approximately one hour from the Federal Courthouse in downtown Memphis, Tennessee. The Mason, Tennessee facility has video teleconferencing capability with the ability of using a secure land line (unmonitored) to provide for attorney-client privileged communications. The number of cases on each report date varies. Each district judge's report date typically contains between 20 and 50 criminal cases as to which the status (ready to go to trial, ready to set change of plea date, or in need of further continuance) is typically quickly announced - often as a consent announcement.

For the two district judges having report date on March 24, 2006, a total of approximately 60 criminal cases are set for report. Other cases, of course, may also be set on those days for sentencing, changes of plea and hearings. No more than two district judges have report on the same day. The other two district judges in the Western Division have other court activities and the three magistrate judges have other matters as to which the presence of criminal defendants may be required.

- 2) Initial appearances and arraignments of incarcerated defendants in the Western Division may be conducted by videoconferencing with the consent of defendant, pursuant to Fed. R. Crim. P. 5(f) and 10(c).

Administrative Order 2005-19 (footnote added).

The Court, through its committee structure, discussed the possibility of video conferencing for report dates with representatives of the United States Attorney's Office, the Federal Defender, and representatives from the CJA Panel prior to entry of the Administrative Order. The Federal Defender, while conceding that there was no authority that there is a constitutional impediment to video conferencing for reports, expressed blanket opposition to the use of video conferencing for the report date function. Video conferencing has been successfully used for a number of months in the district and has resulted in substantial time savings for attorneys and the Court, reduction in security concerns by the United States Marshal's Office, manpower savings for the United States Marshal's Office and court security personnel, reduced overcrowding in the Marshal's detention facility on the 10th floor of the Federal

Building in Memphis, and reduced inconvenience for detainees at the Mason facility.²

The Federal Defender's office has not articulated a sufficient specific need for the presence of the defendant. The motion for the Federal Defender's Office for the defendant's presence at report date is hereby DENIED.

SO ORDERED this 23rd day of March, 2006.

s/ JON PHIPPS MCCALLA
UNITED STATES DISTRICT JUDGE

²On report date, Mason detainees who have to appear at 9:00 a.m. must be shackled and ready to leave Mason by 7:00 a.m. which requires them to be awaked no later than 5:00 a.m. There appears to be broad acceptance of video reports by federal detainees at the Mason facility. Report dates are largely a ministerial function and are not critical events such as initial appearances or changes of plea.